UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREEPLAY MUSIC, LLC,

Plaintiff,

v.

OPTIPRO SYSTEMS, LLC,

Defendant.

OPTIPRO SYSTEMS, LLC,

Counterclaimant,

v.

FREEPLAY MUSIC, LLC

Counterdefendant.

Civil Action No.
15-CV-04627 (ER)

ANSWER TO COUNTERCLAIMS

Plaintiff Freeplay Music, LLC ("FPM"), through its undersigned attorneys, Baker Hostetler, LLP, responds to the counterclaims of defendant and counterclaimant OptiPro Systems, LLC ("OptiPro"):

1. In response to Paragraph 44 of the counterclaims,[1] FPM denies that OptiPro has properly pled an action under section 43(a) of the Lanham Act or sections 349 and 350 of the New York General Business Law, and otherwise avers that the allegations contained therein are legal conclusions, to which no response is required.

2. In response to Paragraph 45 the counterclaims, FPM avers that the allegations contained therein are legal conclusions to which no response is required.

[1] The counterclaimss begin at paragraph 44, rather than 1, and therefore FPM does not respond in like-numbered paragraphs.

3. In response to Paragraph 46 of the counterclaims, FPM avers that the allegations contained therein are legal conclusions to which no response is required.

4. In response to Paragraph 47 of the counterclaims, FPM admits that it does business in New York, and otherwise avers that the allegations contained therein are legal conclusions, to which no response is required.

5. In response to Paragraph 48 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

6. In response to Paragraph 49 of the counterclaims, FPM admits the allgations contained therein.

7. In response to Paragraph 50 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

8. In response to Paragraph 51 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

9. In response to Paragraph 52 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

10. In response to Paragraph 53 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs

11. In response to Paragraph 54 of the counterclaims, FPM admits the allegations contained therein.

12. In response to Paragraph 55 of the counterclaims, FPM admits that, prior to July 2013, no shopping cart feature was used to collect payment for the music downloaded from

FPM's website, and otherwise denies the allegations contained therein and leaves OptiPro to its proofs.

13. In response to Paragraph 56 of the counterclaims, FPM admits the allegations contained therein.

14. In response to Paragraph 57 of the counterclaims, FPM admits the allegations contained therein.

15. In response to Paragraph 58 of the counterclaims, FPM admits the allegations contained therein.

16. In response to Paragraph 59 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

17. In response to Paragraph 60 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

18. In response to Paragraph 61 of the counterclaims, FPM admits that the language in sub-paragraphs "a," "b," "c," and "d" accurately quotes the questions and answers that appear on the pre-July 2013 versions of FPM's website.

19. In response to Paragraph 62 of the counterclaims, FPM admits that the questions and answers referenced in Paragraph 61 were contained in the pre-July 2013 version of FPM's website, and otherwise denies the allegations therein and leaves OptiPro to its proofs.

20. In response to Paragraph 63 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

FIRST COUNTERCLAIMS (Lanham Act)

21. In response to Paragraph 64 of the counterclaims, FPM repeats and realleges the contents of paragraphs 1 through 20 hereof as though the contents thereof were fully set forth herein.

22. In response to Paragraph 65 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

23. In response to Paragraph 66 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

24. In response to Paragraph 67 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

25. In response to Paragraph 68 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

SECOND COUNTERCLAIMS (N.Y. General Business Law Section 349)

26. In response to Paragraph 69 of the counterclaims, FPM repeats and realleges the contents of paragraphs 1 through 25 hereof as though the contents thereof were fully set forth herein.

27. In response to Paragraph 70 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

28. In response to Paragraph 71 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

29. In response to Paragraph 72 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

30. In response to Paragraph 73 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

THIRD COUNTERCLAIMS (N.Y. General Business Law Section 350)

31. In response to Paragraph 74 of the counterclaims, FPM repeats and realleges the contents of paragraphs 1 through 30 hereof as though the contents thereof were fully set forth herein.

32. In response to Paragraph 75 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

33. In response to Paragraph 76 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

34. In response to Paragraph 77 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

35. In response to Paragraph 78 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

36. In response to Paragraph 79 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

FOURTH COUNTERCLAIMS (FRAUD)

37. In response to Paragraph 80 of the counterclaims, FPM repeats and realleges the contents of paragraphs 1 through 36 hereof as though the contents thereof were fully set forth herein.

38. In response to Paragraph 81 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

39. In response to Paragraph 82 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

40. In response to Paragraph 83 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

41. In response to Paragraph 84 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

42. In response to Paragraph 85 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs.

43. In response to Paragraph 86 of the counterclaims, FPM denies the allegations contained therein and leaves OptiPro to its proofs

AFFIRMATIVE DEFENSES

44. The counterclaims fail to state a claim upon which relief can be granted.

45. OptiPro has failed to identify a legally cognizable interest allegedly abridged by FPM.

46. OptiPro has failed to allege injury stemming from any acts of FPM.

47. The counterclaims are barred by the doctrine of unclean hands.

DEMAND FOR JURY TRIAL

FPM requests a trial by jury on all issues so triable.

August 20, 2015
New York, New York

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